

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 96-0598**  
**SALES AND USE TAX**  
**FOR TAX PERIODS: 1993-1995**

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**Issues**

**1. Sales and Use Tax- Electronic Pre-Press Equipment**

**Authority:** IC 6-2.5-3-2(a), P.L. 78-1989, IC 6-2.1-2-4, IC 6-2.5-5-3, Gross Income Tax Division v. National Bank and Trust Co., 79 N.E. 2<sup>nd</sup> 651, (Ind. 1948), Indiana Department of State Revenue v. Cave Stone, Inc., 457 N.E. 2<sup>nd</sup> 52 (Ind. 1983).

Taxpayer protests the assessment of tax on the electronic pre-press equipment.

**2. Sales and Use Tax-Safety Equipment**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-8 (c)(2)(F).

Taxpayer protests the assessment of tax on certain items of safety equipment.

**3. Sales and Use Tax-Deglazing Solvents**

**Authority:** IC 6-2.5-5-3, 45 IAC 2.2-5-8 (c).

**4. Sales and Use Tax-Wrench Bar**

**Authority:** IC 6-2.5-5-3.

Taxpayer protests the assessment of tax on a wrench bar.

**5. Sales and Use Tax-Delivery Charges**

**Authority:** IC 26-1-2-401 (2), 45 IAC 2.2-4-3 (a).

### **Statement of Facts**

Taxpayer is a commercial printer. After a routine audit, the Indiana Department of Revenue assessed additional sales and use tax against Taxpayer. Taxpayer agreed that some of the additional assessments were correct and protested the remaining assessments. A hearing was held on the protest. More facts will be provided as necessary.

### **1. Sales and Use Tax- Electronic Pre-Press Equipment**

#### **Discussion**

Taxpayer's first point of protest concerns the assessment of use tax on electronic pre-press equipment and software. Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. A number of exemptions are available from use tax including those collectively referred to as the manufacturing exemptions. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Division v. National Bank and Trust Co., 79 N.E. 2<sup>nd</sup> 651, (Ind. 1948). IC 6-2.5-5-3 provides for the exemption of "manufacturing machinery, tools and equipment which is to be directly used in the direct production, manufacture, fabrication of tangible personal property."

Taxpayer contends that several of its purchases during the audit period qualify for this exemption which requires that qualifying property be directly used in the direct production process. Exemption is only granted to machinery that is used in a production process, the process of manufacturing tangible personal property. Therefore the first issue to be determined is whether the commercial printing process is a process which produces tangible personal property. The 1989 General Assembly enacted a series of amendments in P.L. 78-1989 which dealt with the characterization of commercial printing.

P.L. 78-1989 first amended IC 6-2.1-2-4 to read as follows:

The receipt of gross income from the following is subject to the rate of tax prescribed in Section 3 (a) of this chapter:

...  
(7) The business of commercial printing that results in printed materials, excluding the business of photocopying.

From this initial provision in the gross income tax, amendments were then made to other gross income tax, adjusted gross income tax and sales/use tax provisions, cross referencing back to commercial printing as described in IC 6-2.1-2-4. Significantly, P.L.

78-1989 amended IC 6-2.5-5-3 adding the language underscored below that expressly references and incorporates the description of “commercial printing” set forth in IC 6-2.1-2-4.

(a) For purposes of this section:

...  
(2) Commercial printing as described in IC 6-2.1-2-4 shall be treated as the production and manufacture of tangible property.

Since the above cited statute defines commercial printing as a manufacturing process, the computers and software will qualify for exemption if they are directly used in this direct production process. In Indiana Department of State Revenue v. Cave Stone, Inc., 457 N.E. 2<sup>nd</sup> 52 (Ind. 1983) the Court sets forth the test for determining whether a particular item qualifies for the directly used in direct production exemption from use tax. The Court stated that items which are considered essential and integral to the production process meet the requirements of the directly used in direct production language of the statute.

Taxpayer claims this exemption for all property highlighted in orange on Taxpayer’s copy of the audit report. These items include ether net cards, computer cable, media adapters, software upgrades and others. Taxpayer used all of these items in the production process after the creation of the artwork and graphics. Therefore they qualify for the directly used in direct production exemption.

### **Finding**

Taxpayer’s first point of protest is sustained.

## **2. Sales and Use Tax-Safety Equipment**

### **Discussion**

Taxpayer’s second point of protest concerns the assessment of use tax on Roll-O-Mat Gold pads. Taxpayer uses these pads in the catwalks above and around the presses. These catwalks are attached to the presses. The pads prevent workers from slipping and protect workers’ knees. OSHA regulations require the use of these pads. Taxpayer claims that these items qualify for the directly used in direct production exemption pursuant to IC 6-2.5-5-3. 45 IAC 2.2-5-8 (c)(2)(F) clarifies this provision as exempting “safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.” Taxpayer has documented that mats are required for worker safety when using the catwalks. However, these mats do not directly affect safety during production.

### **Finding**

This point of Taxpayer's protest is denied.

## **3. Sales and Use Tax-Deglazing Solvents**

### **Discussion**

The deglazing solvents at issue are used to clean the rollers on the printers. Taxpayer contends that these deglazing solvents qualify for the directly used in direct production exemption found pursuant to IC 6-2.5-5-3. This statutory exemption is clarified at 45 IAC 2.2-5-8 (c):

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be used by purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

The deglazing solvents are exempt when used to clean the rollers during a single production run. They are taxable when used to clean between production runs. The auditor asserts that he is only taxing solvent used in between runs. Taxpayer asserts that the solvent at issue is only used during a single run. It is obvious that solvent is necessary for both purposes.

### **Finding**

This point of Taxpayer's protest is sustained subject to audit verification of percentage of exempt use.

## **4. Sales and Use Tax-Wrench Bar**

### **Discussion**

Taxpayer also protests the assessment of use tax on a wrench bar which was purchased at a cost of \$110.00. Taxpayer contends that the use of this wrench bar qualifies for the directly used in direct production exemption pursuant to IC 6-2.5-5-3. To assure that the equipment is operating within the required tolerances, this wrench bar tightens plates in a prepress portion of the printing process while the machinery is shut down. This does not constitute having an immediate effect on the production of Taxpayer's product as required for exemption. Rather, the wrench bar is used as a tool which does not qualify for exemption pursuant to 45 IAC 2.2-5-8 (g) (1).

### **Finding**

This point of Taxpayer's protest is denied.

## **5. Sales and Use Tax-Delivery Charges**

### **Discussion**

Taxpayer agrees that it owes use tax on many of the items assessed in the audit. Taxpayer produced invoices indicating that some of the items on which Taxpayer agrees it owes tax include separately stated delivery charges. Taxpayer contends that these delivery charges are nontaxable services.

Pursuant to the provisions of IC 26-1-2-401 (2), title is presumed to pass to the buyer upon receipt of the tangible personal property. Taxpayer did not offer any evidence to rebut the presumption that title passed upon receipt in these instances. Therefore, Taxpayer did not own the property at the time of the delivery of the subject tangible personal property. 45 IAC 2.2-4-3 (a) provides that "separately stated charges are considered part of selling at retail and subject to sales and use tax if delivery is made by or on behalf of the seller of the property not owned by the buyer." The separately stated delivery charges in this instance are part of the sales price and subject to tax.

### **Finding**

Taxpayer's protest is denied.